

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

DENISE L. LOWRY,	)	No. CV 12-10498-VBK
	)	
Plaintiff,	)	MEMORANDUM OPINION
	)	AND ORDER
v.	)	
	)	(Social Security Case)
CAROLYN W. COLVIN, Acting	)	
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

Plaintiff raises the following issues:

1. Whether the Administrative Law Judge ("ALJ") erred in the

1 assessment of Plaintiff's physical residual functional  
2 capacity;

3 2. Whether the ALJ erred in relying on the vocational expert's  
4 response to an incomplete hypothetical question; and

5 3. Whether the ALJ erred in the credibility findings.

6 (JS at 2-3.)

7  
8 This Memorandum Opinion will constitute the Court's findings of  
9 fact and conclusions of law. After reviewing the matter, the Court  
10 concludes that the decision of the Commissioner must be affirmed.

11  
12 I

13 **THE ALJ CORRECTLY ASSESSED THE MEDICAL SOURCES IN THE RECORD TO**  
14 **DETERMINE PLAINTIFF'S PHYSICAL RESIDUAL FUNCTIONAL CAPACITY**

15 Plaintiff asserts error in the ALJ's determination of her  
16 physical residual functional capacity ("physical RFC") because the ALJ  
17 failed to incorporate many of the limitations assessed by consultative  
18 examiner ("CE") Steven Schwartz. Citing the ALJ's Decision (AR 10-  
19 21), Plaintiff contends that the ALJ essentially adopted Dr. Schwartz'  
20 findings by assigning them "enhanced weight," and for that reason, the  
21 ALJ was mandated to accept all of the physical limitations assessed by  
22 Dr. Schwartz. (JS at 3-4, citing AR 471.)

23 Plaintiff's argument fails in large part because she misconstrues  
24 the language of the Decision, and thus, artificially limits the  
25 medical evidence which the ALJ in fact did consider in reaching his  
26 Decision. The ALJ made an assessment of Plaintiff's physical RFC, and  
27 specifically stated the following:

28 "The findings regarding [Plaintiff's] residual

1 functional capacity are supported by the medical evidence of  
2 record, including but not limited to, the reports of the  
3 consultant examiner and the medical consultant. The  
4 undersigned gives enhanced weight to these assessments, ..."  
5 (Emphasis added, AR 17.)  
6

7 Thus, the ALJ did not give enhanced weight only to Dr. Schwartz'  
8 conclusions, but based his determination of Plaintiff's physical RFC  
9 on all of the medical evidence of record.

10 The Commissioner points out that there is evidence in the record  
11 from Agreed Medical Evaluator ("AME") Dr. Edwin Haronian, who examined  
12 Plaintiff before her date last insured ("DLI"). (See AR 284-298.) The  
13 Commissioner points out that Dr. Haronian found that Plaintiff was  
14 neurologically intact and had full motor strength and normal  
15 sensation. (JS at 8, citing AR 295.) The Commissioner notes that Dr.  
16 Haronian was of the opinion that Plaintiff was only precluded from  
17 "heavy" work. (AR 296.) Plaintiff replies to this argument by  
18 characterizing Dr. Haronian's report as "irrelevant," because, she  
19 claims, the ALJ "does not even mention Dr. Haronian's report in his  
20 decision." (JS at 10.) This is not the case. In determining  
21 Plaintiff's physical RFC, the ALJ in fact did review Dr. Haronian's  
22 report, as referenced directly in the Decision, where several  
23 references are made to Dr. Haronian's report, including a summary  
24 contained in that report by medical evaluator Dr. David Field. (See Ar  
25 at 14.) But Plaintiff persists in arguing that the ALJ erred by not  
26 including all of the limitations set forth in Dr. Schwartz' report.  
27 (See JS at 11.) Again, this is not true. It is the ALJ's function to  
28 weigh conflicting evidence. See Tommasetti v. Astrue, 533 F.3d 1035,

1 1041-42 (9th Cir. 2008), Magallanes v. Bowen, 881 F.2d 747, 750 (9th  
2 Cir. 1989). With regard to the opinions of Dr. Schwartz and Dr. Rose,  
3 the ALJ extensively discussed them in his Decision (AR 17), and as the  
4 ALJ noted, these opinions were rendered three years after the DLI.  
5 Thus, the ALJ adequately examined these opinions in light of the  
6 weight he accorded them, and in light of all the medical evidence in  
7 the record, which the ALJ clearly read and analyzed. The Court  
8 concludes that the ALJ adequately and sufficiently weighed conflicting  
9 evidence and articulated sufficient reasons in his Decision for  
10 arriving at Plaintiff's physical RFC.

11 The Court need not devote substantial attention to Issue No. 2,  
12 which is controlled by the Court's determination of Plaintiff's first  
13 issue. In Issue No. 2, Plaintiff asserts that the ALJ erred in  
14 relying upon an incomplete hypothetical question posed to the  
15 vocational expert ("VE"), because the hypothetical omitted the work-  
16 related limitations assessed by Dr. Schwartz. But as the Court has  
17 indicated, the ALJ was not required to accept all of the limitations  
18 assessed by Dr. Schwartz. For that reason, Plaintiff's second issue  
19 has no merit.

## 20 21 II

### 22 THE ALJ PROPERLY DEPRECIATED PLAINTIFF'S CREDIBILITY

23 In Plaintiff's third issue, she contends that the ALJ failed to  
24 provide any clear and convincing reasons based on substantial evidence  
25 to dismiss her alleged pain and functional limitations as she  
26 described them. (See JS at 14, citing Smolen v. Chater, 80 F.3d 1273,  
27 1281 (9th Cir. 1996).) In response, the Commissioner contends that  
28 the ALJ's Decision in fact does set forth the evidence on which the

1 ALJ relied in the credibility determination. In fact, these  
2 statements are set forth in the Decision at AR 17, immediately above  
3 the ALJ's conclusion that Plaintiff's credibility does not extend to  
4 acceptance of her own descriptions of her pain and limitations.  
5 Plaintiff denies that the ALJ set forth any such basis in the  
6 Decision, but clearly, the ALJ pointed out serious inconsistencies in  
7 Plaintiff's history of daily methamphetamine use and consumption of  
8 alcohol, and also her statements to a physician that she had never  
9 used illegal drugs. (AR 17.) These are important and sufficient  
10 credibility factors upon which the ALJ was entitled to rely.  
11 Moreover, they are consistent with both Social Security Rulings (see  
12 SSR 96-7p) and case law (see Thomas v. Barnhart, 278 F.3d 947, 958-59  
13 (9th Cir. 2002)).

14 For the foregoing reasons, the Court rejects Plaintiff's argument  
15 that the ALJ erred in determining her credibility.

16 The decision of the ALJ will be affirmed. The Complaint will be  
17 dismissed with prejudice.

18 **IT IS SO ORDERED.**

19  
20 DATED: September 9, 2013

\_\_\_\_\_/s/  
VICTOR B. KENTON  
UNITED STATES MAGISTRATE JUDGE